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Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR, MP.

Criminal Appeal No. 3074 /1998.

APPELLANT
(IN JAIL)

: Mathura S/o. Bahalram
age 22 years, Occupation
agriculture, R/o. Village-
Chitarpur PS-Dhorpur
Teh- Lundra District-
Sarguja, MP.

20356

28-12-98

Filed on
by Shri. A. S. Saini
Advocate

Rto. A. R.

-Versus-

RESPONDENT.

: The State of M.P. through
PS- Dhorpur District-
Sarguja, MP.

CRIMINAL APPEAL U/S. 374(2) OF THE CODE OF
CRIMINAL PROCEDURE-1973.

With Amendment

आदेश पत्रक

मामला क्रमांक

Cr. A. No. 3074/1998
सन् 2000

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH:</u> HON'BLE SHRI L.C. BHADOO, J & HON'BLE SHRI DHIRENDRA MISHRA, J. CRIMINAL APPEAL NO. 3074 of 1998 Appellant : Mathura Vs Respondent : State of Madhya Pradesh Dr. Shailesh Ahuja, learned counsel for the appellant. Shri D.K. Gwalre learned Dy. G.A. for the respondent/State. <u>ORAL JUDGMENT</u> (22.04.2006) <u>Per L.C. Bhadoo, J</u> By this appeal under Section 374 (2) of the Cr.P.C., accused/appellant Mathura, has questioned the legality and correctness of the judgment of conviction and order of sentence dated 19.11.98 passed by learned Sessions Judge, Surguja in S.T. No. 11/98 whereby the learned Sessions Judge after holding the accused/appellant guilty for the commission of offence under Section 302 of the IPC, sentenced him to undergo imprisonment for life and to pay a fine of Rs. 200/-, in default of payment of fine to further undergo four months rigorous imprisonment. 2. Case of the prosecution, in brief, is that on 07.12.97 at 9.30 a.m., P.W.-1 Shanti Bai lodged the report in police station Dhourpur to the effect that she was married to one Sohar Bargah of village Bhedia in Court marriage and since then she is residing in Bhedia. Mathura of village Chitarpur	

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आदेश पत्रक

मामला क्रमांक

C.A. No. 3814/98
सेन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	wanted to marry her but he was not liked by her therefore, she married Sohar in a Court marriage on which Mathura and Sohar quarrelled. This year, she along with her husband Sohar went to her father at village Chitarpur on the occasion of Deepavali festival and at that time also Mathura quarreled with her husband Sohar. On 5.12.97, i.e. Friday, her father Manjhi called her and her husband, Sohar to village Chitarpur for the purpose of thrashing paddy. On the next day i.e. on 6.12.97, the date of incident, (Saturday) she along with her father and her husband were thrashing paddy and some people of the village were dancing there. Mathura was also there. After thrashing the paddy when they were going towards their residence, Mathura came from behind and after abusing Sohar, assaulted him with Geda (branch of tree). Receiving this report, the S.H.O. of police station Dhourpur registered the crime under Section 302 of the IPC and left for the place of occurrence. After giving notice to the panchas, prepared the inquest report P-8. He also prepared the site plan P-10. The weapon of offence-Geda was taken into possession under P-11. Blood stained soil and plain soil were taken into possession under P-12. Body of Sohar was sent for post mortem examination to the Primary Health Centre, Dhourpur under P-2 where Dr. K.P. Vishwakarma, P.W.-3 conducted the post mortem and prepared the post mortem report P-3 wherein he opined that the death is caused by cardio respiratory arrest due to excessive hemorrhage. The weapon of offence-Geda, in question was examined by the doctor on being requested by the police and he gave his opinion that it was possible to cause injuries found on the deceased by the said weapon. After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Surguja who in turn committed the case to the Sessions Judge, Ambikapur where the	

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आदेश पत्रक

मामला क्रमांक

G.A. No. 3014/98
सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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	prosecution in order to establish the charge against the accused/appellant examined four witnesses.	
3.	On the other hand, statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him.	
4.	Learned Sessions Judge after hearing the counsel for the respective parties, convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment.	
5.	We have heard Dr. Shailesh Ahuja, learned counsel on behalf of the accused/appellant and Shri D.K.Gwalre, learned Dy. G.A. on behalf of the State.	
6.	Homicidal death of Sohar is not in dispute.	
7.	As far as the involvement of the accused in the crime in question is concerned, P.W.-1 Shanti, wife of the deceased, who was present at the time of commission of the crime, has categorically stated that when she along with her husband Sohar was returning after thrashing paddy, accused/appellant assaulted her husband with Geda on his head. In paragraph two of her statement, she has stated that the accused asked for liquor from her husband which her husband refused and slapped the accused/appellant thrice. She has further stated that when the accused/appellant assaulted her husband, she raised the screams on	

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आदेश पत्रक

मामला क्रमांक C.A. No. 3874/98
सेन 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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	which her mother Kuleshwari and father Manjhi came and the matter was reported in the police station under P-1.	
8.	In the cross examination, the defence has not been able to elicit any circumstance which makes this evidence unreliable or untrustworthy.	
9.	However, the evidence of this witness (P.W.-1) stands corroborated by the medical evidence of P.W.-3 Dr. K. P. Vishwakarma, who opined that the injury was found on the right side of the head and the bone was fractured. Clotted blood was present and the injury was 7" in length as a result of which the right side bone of the head was fractured. The weapon of offence - Geda was recovered from the place of occurrence and sent to the Forensic Science Laboratory, Sagar and as per the report blood was found on the said weapon.	
10.	In view of the above, we are of the considered opinion that involvement of the accused/appellant in the crime in question is established and we do not find any illegality or infirmity in the finding of the trial Court to that extent.	
11.	Dr. Shailesh Ahuja, counsel for the accused/appellant argued that from the evidence, it is established that in the first instance, the deceased slapped the accused thrice which enraged him and he assaulted with Geda without any preplan, premeditation, in the spur of moment and in the heat of passion. Therefore, offence against the accused/appellant does not travel beyond Section 304-II of the IPC.	

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आदेश पत्रक

मामला क्रमांक

C.A.N. 3674/98
सन 2000

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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12.	On the other hand learned counsel on behalf of the State supported the judgment of the trial Court.	
13.	In order to appreciate the argument advanced by the counsel for the accused/appellant, we have scrutinized the evidence of P.W.-1 Shanti Bai. In paragraph two of the examination in chief, she has stated that the accused demanded liquor from her husband on which her husband slapped him thrice and thereafter accused assaulted with Geda. Therefore, we are of the considered opinion that the case of the accused/appellant is clearly covered under exception 4 of Section 300 of the IPC and offence against the accused/appellant does not travel beyond Section 304-II of the IPC.	
14.	Thus, the conviction and sentence imposed upon the accused/appellant under Section 302 of the IPC cannot be sustained.	
15.	In the result, the appeal partly succeeds and the conviction and sentence imposed upon the accused/appellant under Section 302 of the IPC are set aside. Instead thereof, he is convicted and sentenced under Section 304-II of the IPC and sentenced to undergo rigorous imprisonment for nine years. The accused/appellant is said to be in custody since 10.12.97, therefore he shall be entitled for set off of this period against the above sentence imposed upon him.	
	Sd/- L.C.BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge

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9/6/98

8/6/98

11/5/98